IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12662 of 2001

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNAGAR DISTRICT PANCHAYAT

Versus

G S UPADHYAY

Appearance:

MR HS MUNSHAW for Petitioner No. 1

MR JF SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 16/07/2004

ORAL JUDGEMENT

1.0 In this petition the petitioner challenged the order dated 20th June 2001 passed by the Gujarat Civil Service Tribunal, Gandhinagar in Appeal No.329/1998.

2.0 The respondent was appointed as Acting Assistant in the Local School Board on 14th September 1954. Thereafter he was appointed as Junior Clerk on 26th June 1957 and he was promoted as Senior Clerk on 30th March 1967. However, later on he was reverted and again promoted on 28th March 1972 to the post of Senior Clerk. Lastly he was promoted to the post of Deputy Chitnis with effect from 24th December 1981. The regular promotion to the post of Deputy Chitnis was equivalent to Head Clerk. The respondent took voluntary retirement on 31st December 1989.

2.1 Thereafter the respondent made representation before the authorities praying for deemed date of promotion to the post of Head Clerk/Deputy Chitnis on the ground that his juniors were promoted and given benefit of deemed date. The District Development Officer, Bhavnagar rejected the representation of the respondent by order dated 10th March 1998.

2.2 The respondent, therefore, approached Gujarat Civil Service Tribunal, Gandhinagar by way of filing Appeal No.329/98. The Tribunal by order dated 20th June 2001 directed the petitioner to give deemed date of promotion to the respondent with effect from 27th August 1970. It is against the said order the present petition has been filed.

3.0 Learned counsel for the petitioner submitted that Mr. Balim was granted deemed date of promotion to the post of Deputy Chitnis with effect from 27th August 1970 due to the orders of the Tribunal. He further submitted that Mr. Balim joined the service on 1st August 1956 whereas the respondent has joined the service on 26th June 1957. He, therefore, submitted that the respondent is not eligible for deemed date of promotion. Mr. Munshaw pointed out that Mr. G.H. Trivedi was not an employee of Local School Board and therefore the respondent cannot compare with him for deemed date of promotion.

4.0 Mr. J.F. Shah, learned counsel for the respondent submitted that when the respondent was promoted as a Senior Clerk in the year 1972, Balim was not even promoted and Mr. Balim was Junior Clerk till 1977. In para 20 of the order of the Tribunal it is stated as under:

"20. It is true that appellant is senior to Balim as Senior Clerk and the appellant has most arguable case for his seniority and deemed date.

> The Deptt. has followed the rules as per their convenience. The point of department-wise seniority is bad. The representative of respondent lastly agreed to the point of appellant getting the deemed date from that of Balim."

Thus, the representative of the petitioner has practically conceded the case of the present respondent.

5.0 Apart from that the order in question was passed by DDO in his capacity as quasi judicial authority sitting in appeal under statutory rules of 1977 and since the DDO was a party in his capacity as a statutory authority, the Panchayat could not have preferred this petition. Even on this ground also the petition cannot be entertained.

6.0 As regards the contention of Mr. Munshaw that Mr. Balim was given deemed date because of the fact that the Tribunal had passed orders in his favour. This has come for the first time by way of ground in this petition without producing the judgement of the Tribunal on record. It appears that this contention was not raised before the Tribunal also.

6.1 In any case, in view of the fact that the representative of the respondent agreed about the deemed date before the Tribunal, the petitioner should have accepted the decision. Admittedly the respondent became Senior Clerk in 1972 while Balim was Junior Clerk till 1977. Under the circumstances, when Balim was given deemed date of promotion there was no reason to deny such benefit to the respondent. The Tribunal has recorded a finding of fact that the dates of joining service, the dates of promotion, the seniority list are not disputed. The Tribunal has also rightly come to the conclusion that length of service to a particular class, category or grade is the relevant criteria for the purpose of counting the period with respect to length of service for the purpose of determining seniority. When the respondent was promoted as Senior Clerk in the year 1972, the authority ought to have given deemed date to the respondent when they have given such benefit to Mr. Balim. Therefore, there is clear discrimination against the respondent.

7.0 In view of the above facts and circumstances of the case the order of the Tribunal is just and proper and in consonance with the law laid down by this Court and the Apex Court and does not warrant any interference in

this petition. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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